## ATTORNEY GENERAL DEPARTMENT OF JUSTICE

33 CAPITOL STREET CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE ATTORNEY GENERAL



MICHAEL A. DELANEY DEPUTY ATTORNEY GENERAL

September 12, 2005

Section 5 Submission

Chief, Voting Section Civil Rights Division Room 7254 – NWB Department of Justice 950 Pennsylvania Ave., NW Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 654:30, a STATUTE related to the correcting data files related to the checklist, most recently amended by Laws of 2004 Chapter 229 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:30, a STATUTE related to the correcting data files related to the checklist, most recently amended by Laws of 2004 Chapter 229 and previously amended by the chapters cited below.

## SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 229 (2004) amending RSA 654:30 is attached (Exhibit 654:30 A).
- b) The starting point for analysis, previously precleared, Chapter 436 (1979) recodifying RSA 55:05-a as RSA 654:30 is attached (Exhibit 654:30 B).
- c) The changes made by amendments to RSA 654:30 are as follows:

- 1. Chapter 229 (2004) replaced the last sentence of this statute with the following "Information from the voter registration data file shall be available as provided in RSA 654:31-a"
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State's legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 229 (Exhibit 654:30 A). The bill was signed into law (by the Governor) on June 11, 2004, pursuant to New Hampshire Constitution Part Second, Article 44.

- i) Adoption dates:
  - 1. Chapter 229 (2004) adopted June 11, 2004
- j) Effective dates:
  - 1. Chapter 229 (2004) effective August 10, 2004
- k) The changes have been enforced.
- 1) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:
  - 1. The purpose of the Chapter 229 (2004) change is to update this statute to conform it to the requirements and purpose of RSA 654:31-a, the *Right to Know Exception* to these election laws.

In the interest of protecting voter's private information and deterring identity theft RSA 654:31-a makes certain voter information non-public. The language of this statute, prior to amendment, made that same information public.

- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. 42 U.S.C. 1973c. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). "(T)he ability of minority groups...to elect their choices to office" will not be diminished. *Beer v. U.S.*, 425 U.S. 130,141 (1976).
- o) None known.
- p) RSA 654:30 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as <a href="Exhibit 654:30">Exhibit 654:30</a> C. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 654:30 D is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Orville B. Fitch II

Senior Assistant Attorney General

Civil Bureau

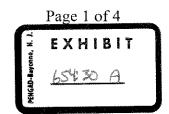
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### **CHAPTER 229**





02/19/04 0448s

22Apr2004... 1198h

05/25/04 1620cofc

2004 SESSION

04-3209

03/09

SENATE BILL 490-FN

AN ACT relative to voting procedures and relative to ward boundaries in Manchester.

SPONSORS: Sen. Martel, Dist 18; Sen. D'Allesandro, Dist 20; Rep. Fields, Hills 58

COMMITTEE: Internal Affairs

## AMENDED ANALYSIS

This bill:

- I. Requires that civil penalties for voter fraud be deposited in the election fund.
- II. Permits a person registering as an absentee voter to use a letter from the administrator of a nursing home or similar facility as proof of identity and domicile.
- III. Clarifies certain requirements for maintaining checklists, preparing voting materials, and assisting disabled voters.
- IV. Requires that state senate and representative elections in Manchester be conducted in accordance with the ward lines established in its city charter.

\_\_\_\_\_

Explanation: Matter added to current law appears in bold italics.

Matter removed from current law appears [in brackets and struckthrough.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

02/19/04 0448s

22Apr2004... 1198h

05/25/04 1620cofc

04-3209

03/09

## STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Four

AN ACT relative to voting procedures and relative to ward boundaries in Manchester.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 229:1 Penalties for Voter Fraud; Deposit of Penalties. Amend RSA 659:34, III(b) to read as follows:
- (b) The written notice shall be served in hand or sent by registered or certified mail to the last known address of such person. The person shall have 30 days to pay any civil penalty assessed under this section to the secretary of state for deposit into the [general] election fund established pursuant to RSA 5:6-d.
- 229:2 Election Procedure; Prohibited Acts; General Provisions; Disposition of Fines. Amend RSA 659:45 to read as follows:
- 659:45 General Provisions. It shall be the responsibility of the moderator to report any violation occurring under RSA 659:34 through RSA 659:44 to the attorney general. All fines imposed under [these sections] RSA 659:35 through RSA 659:44 shall be paid to the county in which the offense was committed. All penalties assessed under RSA 659:34 shall be paid to the secretary of state for deposit into the election fund established pursuant to RSA 5:6-d.
- 229:3 Absentee Registration Affidavit. Amend RSA 654:17, I to read as follows:
- I. The absentee registration affidavit shall be prepared by the secretary of state and shall be in substantially the following form:

## Affidavit (Absence from town)

I, do hereby swear or affirm, under	the penalties for voting fraud set forth below, the following:
That my legal domicile is in the town of election day and am entitled to vote in the election to be for the fact that my name does not appear on the checklist	, New Hampshire, I will be of the age of 18 years or over on held in said town on, (date), except to be used in said town at such election;

- 2) That I do not intend to be present within said town at such time prior to said election as shall enable me personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;
- 3) That I am temporarily residing in \_\_\_\_\_ (city and state or city, province, and country);
- 4) That I hereby enclose one of the following as proof of identity and domicile:
- (a) A copy of a current and valid New Hampshire driver's license or an armed services identification or other photo identification issued by the United States government that shows [the] my name and address [of the voter]; or
- (b) A copy of a current and valid photo identification and a copy of a current utility bill, bank statement, government check, paycheck, [or] other government document that shows [the] my name and address, [or the voter] or a letter from the administrator of a nursing home or similar facility affirming that I am a resident of that facility that was provided to me at my request pursuant to the administrator's duty to provide such a letter upon my request;
- 5) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 4) above, this application may not be approved; and
- 6) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

Signature of Applicant
Date
In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.
Affidavit (Physical Disability)
I,do hereby swear or affirm, under the penalties for voting fraud set forth below, the following:
1) That my legal domicile is in the town of, New Hampshire, I will be of the age of 18 years or over on election day, and am entitled to vote in the election to be held in said town on, (date), except for the fact that my name does not appear on the checklist to be used in said town at such election;
2) That I am unable by reason of physical disability personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;
3) That I hereby enclose one of the following as proof of identity and domicile:
(a) A copy of a current and valid New Hampshire driver's license or an armed services identification or other photo identification issued by the United States government that shows [the] my name and address [of the voter]; or
(b) A copy of a current and valid photo identification and a copy of a current utility bill, bank statement, government check, paycheck, [or] other government document that shows [the] my name and address, [or the votor] or a letter from the administrator of a nursing home or similar facility affirming that I am a resident of that facility that was provided to me at my request pursuant to the administrator's duty to provide such a letter upon my request;
4) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 3) above, this application may not be approved; and
5) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.
Signature of Applicant
Date
In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.
229:4 Preparing Checklist. Amend RSA 654:25 to read as follows:
654:25 Preparing Checklist.
[H] The secretary of state shall issue and distribute guidelines for the composition and style of checklists and for the

maintenance of data related to checklists by which the supervisors of the checklist shall compile and correct the checklist. Such guidelines shall specify the information which will be maintained and updated by the supervisors. The secretary shall establish standard forms and procedures for the use of the supervisors for the maintenance of such information. The information to be maintained and updated shall include the full name, address, and party affiliation, if any, of each voter on the checklist and such other information as the secretary requires. [The supervisors shall use the information so maintained and updated to prepare the checklist for all state elections. Except as provided in paragraph II, Every checklist used at any [state] election shall contain [as a minimum] the full name, address, [and mailing address if different,] and party affiliation, if any, of each voter on the checklist. The name and address [and mailing address; if different,] of a voter shall not appear on the checklist at the request of the voter if the voter presents to the supervisors of the checklist a valid protective order pursuant to RSA 173-B. [A voter who presents a valid protective order may, however, request that a mailing address, if different, be maintained on the checklist. If a voter who presents a valid protective order requests that no address be maintained on the checklist, the supervisors of the checklist may nonetheless maintain a designation on the checklist which indicates that no address is required for that voter.] The name, address, and mailing address, if different, of such a voter shall be maintained on a separate list of voters, which shall be nonpublic and not subject to RSA 91-A. If it is necessary to establish such a nonpublic list, the public checklist shall be marked at the end with a notation of the number of voters whose names are maintained on the nonpublic list.

[H. If a municipality prepares a separate checklist solely for use at a state election, such checklist may omit a voter's mailing address, if different.]

229:5 Checklists; Correcting Data Files. Amend RSA 654:30 to read as follows:

654:30 Correcting Data Files. After each state election, the supervisors shall use the checklist from such election to correct the standard data files to conform to any changes which are evident from the checklist. [The standard data file so maintained and corrected shall be a public record open to inspection at reasonable times and as otherwise required by law.] Information from the voter registration data file shall be available as provided in RSA 654:31-a.

229:6 Preparation of Voting Materials; Squares. Amend RSA 656:8 to read as follows:

656:8 Squares. Directly at the right of the name of each candidate there shall be a square, box, oval, or other appropriate symbol for directing voters where to make the appropriate mark; except that, in the case of president and vice-president of the United States, one square, box, oval, or other appropriate symbol shall suffice which shall be placed opposite the designation "President and Vice-President of the United States"

229:7 Assistance in Voting. Amend RSA 659:20 to read as follows:

659:20 Assistance in Voting. Any voter who declares to the moderator under oath that [he] said voter cannot read or that, because of [legal blindness or other physical] disability, [he] is unable to mark his or her ballot shall, upon [his] the voter's choice and request, receive the assistance of one or both of the inspectors of election detailed for that purpose by the moderator or of a person of the voter's choice provided that the person is not the voter's employer or union official. [Such inspectors of election shall thereafter give no information regarding the same. Provided that any voter unable to mark his ballot because of his legal blindness may be assisted in such marking by any person who is a qualified voter in the same town or ward whom he may designate.] Such person so assisting shall be sworn, shall mark the ballot as directed by said voter, and shall thereafter give no information regarding the same. [He] Such person so assisting shall leave the space within the guardrail with the [disabled] voter.

229:8 Manchester; Ward Boundaries. For purposes of elections for state senator and state representative conducted after the effective date of this act, ward boundaries for senate and representative districts in Manchester shall be the ward boundaries established by the city of Manchester in its charter.

229:9 Effective Date. This act shall take effect 60 days after its passage.

(Approved: June 11, 2004)

(Effective Date: August 10, 2004)

654:28 Procedure. The supervisors of the checklist shall hear all applications for a correction of the checklist and the evidence submitted thereon and shall correct it according to their best knowledge so that it contains only the names of those persons qualified to vote at said election. The names of all persons not qualified to vote at the time of any session, but who shall clearly be qualified to vote on election day, may be added to the checklist at that session. No additions or corrections shall be made after 6:00 p.m. Saturday 10 days prior to election day, except as provided in RSA 659:12. The additions and corrections resulting from such sessions shall be made to the previously posted checklist on or before midnight on the succeeding Wednesday either by additions or corrections to said checklist or by posting a new corrected checklist. Notice of such additions or corrections to the checklist shall also be given to the town or city clerk.

654:29 Certification of List.

I. The supervisors shall subscribe and make oath to the following certificate on the back of the checklist, as corrected by them: We, the supervisors of the checklist of the town (or ward) of solemnly swear that, according to our best knowledge, the within list contains (number) names of those persons only who are, by actual domicile, legal voters in said town (or ward).

II. They shall file a true copy of the corrected list, attested by them, with the town clerk. The checklists so corrected shall be used at the election. Any person who swears falsely in making such certificate shall be guilty of perjury.

**654:30** Correcting Data Files. After each state election, the supervisors shall use the checklist from such election to correct the standard data files to conform to any changes which are evident from the checklist. The standard data file so maintained and corrected shall be a public record open to inspection at reasonable times and as otherwise required by law.

654:31 Availability of Checklist. The checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. After each state election, the supervisors shall furnish to any person requesting the same a of the checklist which was used in said election without the voting marks thereon and with or without party designations at the discretion of said supervisors. The supervisors may charge a reasonable fee for these copies for the use of the town or city.

# Checklists: Additional Provisions for Primary Elections

654:32 Hearings on Alterations to Party Registration. Before each state or presidential primary election, the supervisors of the checklist shall be in session for the change of party registration of legal voters. The sessions shall be on 2 days, at least, and at such other times as they deem necessary, and shall not be closer in time to the primary than the day immediately prior to the first day for the filing of a declaration of candidacy.

**654:33 Posting Copies;** Notice of Sessions. The supervisors shall post copies of the checklist, showing the persons in the town or ward entitled to vote, with their party registration, so far as such registration has been made, in 2 or more public places in such town or ward at least 10 days prior to such session; and notice of the date, hour and place of the sessions to revise such registration shall be given upon such checklists.

654:34 Change of Registration.

CHAPTER 436

I. Change of registration of a voter whose party membership has been previously registered.

(a) Any legal voter whose party membership has been registered may change such registration by appearing in person before the supervisors of the checklist for his town or ward at any session provided for in RSA 654:32 and stating to them under oath or affirmation, that:

(1) He intends to affiliate with and generally supports the candidates of the party with which he offers to register, in which case he shall be registered

as a member of such party; or

(2) He does not wish to be registered as a member of any party, in which

case his party designation shall be removed from the checklist.

(b) He may also change such registration at any primary, upon making oath or affirmation to the same effect, but he shall not be permitted in such case to vote the ballot of any party at such primary.

case to vote the panot of any party as such primary.

II. Change of registration of a voter whose party membership has not been

previously registered.

(a) Any legal voter who has not been registered as a member of any party may register as a member of the party of his choice by appearing before the supervisors of the checklist for his town or ward at any session provided for in RSA 654:27 and stating to them, under oath or affirmation, if required, that he intends to affiliate with and generally supports the candidates of the party with which he offers to register, in which case he shall be registered as a member of such party.

(b) He may also register as a member of a party at any primary by requesting and voting the ballot of the party of his choice and if challenged, he shall take an oath or affirmation to the effect that he intends to affiliate with and generally supports the candidates of that party.

III. Notwithstanding any provision of paragraphs I and II to the contrary, no person who has voted in a primary may thereafter on the day of said primary change his party registration or change his registration so that he is registered as a member of no party.

**654:35** Corrected List. After a pre-primary session, the supervisors shall prepare a corrected checklist showing the registration of party members as corrected by them; and such checklist with the corrections that shall have been made in the sessions provided for in RSA 654:27 through 654:32 shall be used at the primary.

## Periodic Maintenance and Verification of Checklists

654:36 Reports of Transfer. If the supervisors of the checklist have received a notice of transfer from another board of supervisors of the checklist in the state of New Hampshire that a voter whose name is on the checklist has been added to the checklist of some other town or city, they shall strike that name from the checklist at the next session for the correction of the checklist. They shall retain the notice as proof of their reasoning in striking the name from the checklist.

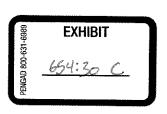
654.37 Reports of Death. Whenever there is filed in his offinotice of the death of any person or persons of the age of 18 year town or city clerk shall notify the supervisors of the checklist of submitting a notice of same to the supervisors at their next regrupon receipt of such notice, the supervisors shall examine the cifthename of said deceased person appears thereon, it shall be reto the next election. Any supervisor who shall neglect or refuse name of such deceased voter from the checklist after receiving from the town or city clerk shall be guilty of a violation.





## U.S. Department of Justice

## Civil Rights Division



JDR:RPL:SMC:jdh DJ 166-012-3 2004-2563 2004-2581 2004-2582 Voting Section - NWB. 950 Pennsylvama Avenue, N.W. Washington, DC 20530

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

This refers to Session Law Chapter 436 (HB 575)(1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577)(2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991))(to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

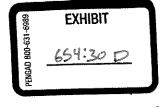
Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

Sincerely,

Joseph D. Rich Chief, Voting Section

## ATTORNEY GENERAL DEPARTMENT OF JUSTICE

33 CAPITOL STREET CONCORD, NEW HAMPSHIRE 03301-6397



KELLY A. AYOTTE ATTORNEY GENERAL



MICHAEL A. DELANEY DEPUTY ATTORNEY GENERAL

## News Release

RELEASED BY:

Attorney General Kelly A. Ayotte

SUBJECT:

Voting Rights Act - Submission of a request for preclearance of

changes to New Hampshire Voting laws and procedures

DATE:

June 10, 2005

RELEASE TIME:

**Immediate** 

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

News Release – Voting Rights Act section 5 Preclearance Submission June 10, 2005
Page 2 of 2

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

## http://www.doj.nh.gov/elections/

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

## http://www.usdoj.gov/crt/voting/index.htm

The New Hampshire Attorney General's Office Voting section can be contacted at:

http://www.doj.nh.gov/elections/ New Hampshire Toll Free 1-866-8868-3703 or 1-866-VOTER03 electionlaw@doj.nh.gov

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